



a. The increased discharge will be offset through a trade or other means with another discharge of the same pollutant to the impaired water. The offset must be approved by the department and implemented prior to the increase.

b. The water quality standard that is not being attained has been removed or revised in accordance with state regulatory procedures and approved by the EPA.

3. 'Other waters that attain the water quality standard.' For discharges of a pollutant to a surface water where neither the immediate receiving water or downstream water is an impaired water for the pollutant, any water quality based effluent limit, including a limitation based upon a total maximum daily load or other wasteload allocation, may be made less stringent provided water quality standards, including designated uses and antidegradation, are met.

Thank you,

Andrew Simek

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Andrew J. Simek  
 Attorney —Bureau of Legal Services  
 Wisconsin Department of Natural Resources  
 Phone: (608) 264-6009  
[Andrew.Simek@wisconsin.gov](mailto:Andrew.Simek@wisconsin.gov)



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**From:** Bauer, Candice [<mailto:bauer.candice@epa.gov>]  
**Sent:** Wednesday, June 21, 2017 10:03 AM  
**To:** Nyffeler, Robin T - DNR  
**Cc:** Knutson, Jason R - DNR ; Simek, Andrew J - DNR ; Stocks, Adrian G - DNR ; Wester, Barbara ; Compton, Mark  
**Subject:** RE: "Surface waters" issue in rule pack 5

Hi Robin and others. After talking further with my staff, we have the following input on the two

questions you have sent as follow-up to our call this week.

First, you raised the additional question in red below in response to our response to your first question on antibacksliding...

Stakeholders suggested that mistaken information cannot be used to justify relaxation of a WQBEL and cites EPA's permit writer manual. WDNR would like to know if EPA is aware of such a provision. The relevant provision is 402(o)(2)(B)(ii). While technical mistakes can be a rationale for relaxing a limit under 402(o)(2) for the types of limits specified in 402(o)(1), the fact that 402(o)(2)(B)(ii) on technical mistakes provides that this exception can be used only in the case of limits established under 402(a)(1)(B), which does NOT include WQBELS, means that technical mistakes cannot be used as a basis for modifying a WQBEL. Can you please describe or identify the types of limits that are established under 33 USC 1342(a)(1)(B)? Is it only BPJ limitations? Note that the language in 33 USC 1342(o)(2) that begins as follows: "*Subparagraph (B) shall not apply to any revised wasteload allocation or alternative grounds for translating water quality standards into effluent limitations....*" seems to indicate that 33 USC 1342(o)(2)(B)(ii) could also apply to relaxation of wqbels, but the allowance to relax based on technical mistakes is very limited. Our response to your question "is it only BPJ limitation" is yes (as 33 USC 1342(a)(1)(B) only relates to BPJ limitations).

Second, while the changes below to sections NR 220.15 address our comment that the term "surface water of the state" is not defined, we note that the definition of surface water, similar to the definition of water of the state, is not consistent with the term "waters of the US" as outlined in issue 58 of the LAR. While our LAR issues did not note inconsistencies between the term surface water and water of the US previously, Wisconsin's incorporation of this definition into the NPDES regulations would raise concerns on the definition of surface water, like we raised in Issue 58. As such, we believe that the recommendation we provided earlier would ensure that, when issue 58 is resolved, this provision would be fully consistent with the federal regulations and not add to the list of issues that need to be resolved in the future.

Please let us know if you would like to follow-up further on these or other issues.

Candice

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Candice R. Bauer, Ph.D.

Chief, Section 2

NPDES Branch, EPA Region 5, WN-15J

77 W. Jackson Blvd., Chicago, IL 60604

Office Phone: 312-353-2106, Fax: 312-697-2668

**From:** Nyffeler, Robin T - DNR [<mailto:Robin.Nyffeler@wisconsin.gov>]  
**Sent:** Tuesday, June 20, 2017 9:38 AM  
**To:** Bauer, Candice <[bauer.candice@epa.gov](mailto:bauer.candice@epa.gov)>  
**Cc:** Knutson, Jason R - DNR <[Jason.Knutson@wisconsin.gov](mailto:Jason.Knutson@wisconsin.gov)>; Simek, Andrew J - DNR <[Andrew.Simek@wisconsin.gov](mailto:Andrew.Simek@wisconsin.gov)>; Stocks, Adrian G - DNR <[Adrian.Stocks@wisconsin.gov](mailto:Adrian.Stocks@wisconsin.gov)>  
**Subject:** "Surface waters" issue in rule pack 5

Does the edited language below address EPA's concern regarding use of the term "surface water"? See changes in red and highlighted yellow. At the bottom of the email, the definition of surface waters that is contained in s. NR 101.03(12) is included. Also, after today, if you have questions on rule package 5, please contact Andrew Simek or Jason Knutson. I will be out of the office beginning on June 22 and won't return until July 10.

SECTION 21. NR 220.15 is repealed and recreated to read:

**NR 220.15 Disposal of pollutants into publicly owned treatment works, land treatment systems, or land application of wastewater. (1)** In this section, "surface water" has the meaning in s. NR 101.03(12).

(2) When part of a discharger's process wastewater is not being discharged into surface waters of the state because it is disposed into a POTW, into a land treatment system, or via land application of wastewater, thereby reducing the flow or level of pollutants being discharged into a surface water ~~of the state~~, applicable effluent standards and limitations for the discharge in a WPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into surface waters ~~of the state~~, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in par. (a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters ~~of the state~~, and dividing the result by the total wastewater flow. This method is expressed algebraically as:

$$P = \frac{E \times N}{T}$$

Where:

P is the final, adjusted permit effluent limitation,

E is the limitation derived by applying effluent guidelines to the total wastestream,

N is the wastewater flow to be treated and discharged to surface waters, and

T is the total wastewater flow.

(c) In addition to the adjustment in par. (b), effluent limitations and standards may be further adjusted under a fundamentally different factors variance under s. NR 220.20 to make them more or less stringent if discharges to POTWs or land treatment systems change the character or treatability of the pollutants being discharged.

**Note:** “Land treatment system” is defined in s. NR 214.03 (24). Wells as defined in s. NR 812.05 (1) (b) are not land treatment systems. Disposal of pollutants into wells is prohibited by s. NR 812.05.

**(2)** Sub. (1) does not apply to the extent that effluent limitations guidelines do any of the following:

(a) Control concentrations of pollutants discharged but not mass.

(b) Specify a different specific technique for adjusting effluent limitations to account for land application or disposal into POTWs.

**(3)** This section does not alter a permittee’s obligation to meet any more stringent limitations or requirements established under other WPDES permit program regulations, including those under chs. NR 204 and 214.

Here is the definition of surface water in s. NR 101.03(12). It is almost identical to our state definition of “waters of the state” except “groundwater” and “wells” have been removed.

**(12)** “Surface water” means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, impounding reservoirs, marshes, water courses, drainage systems and other surface water, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and completely retained upon the property of a facility.

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Robin T. Nyffeler  
Attorney – Bureau of Legal Services  
Wisconsin Department of Natural Resources

Phone: (608) 266-0024

Fax: (608) 266-6983

[robin.nyffeler@wisconsin.gov](mailto:robin.nyffeler@wisconsin.gov)



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